

# **EXHIBIT N**

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

HITUL GANDHI, Individually,	)	
and on behalf of a class	)	
of others similarly situated,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	1:08cv-00248-SS
DELL INC.,	)	
and	)	
DELL MARKETING USA L.P.,	)	
	)	
Defendants.	)	
	)	

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DEPOSITION OF:

NICHOLAS STEWART

Taken on Behalf of the Defendants

November 3, 2007

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VOWELL & JENNINGS, INC.  
Court Reporting Services  
207 Washington Square Building

214 Second Avenue North

Nashville, Tennessee 37201

(615) 256-1935

1 A. No.

2 Q. Are you taking any kind of medication  
3 at all on a regular basis?

4 A. No, none at all.

5 Q. When you first went to work at  
6 Spherion, ultimately for Dell, what position did  
7 you have at the time?

8 A. Sales rep on the queue.

9 Q. And how long did you work as a sales  
10 rep on the queue?

11 A. With Spherion, it was the initial 90  
12 days or the three months. After that, I worked  
13 from December 31st, 2001, until, if I remember  
14 correctly, it was February of 2003 as a sales rep.

15 Q. And what did you go to at that point?

16 A. At that point I moved into a software  
17 and peripheral role.

18 Q. And how long did you work in that role?

19 A. That role I worked from February until  
20 about October, in which case I moved to my final  
21 role which was the services technical sales rep  
22 position.

23 Q. And what is that?

24 A. It's very similar to the TSR position  
25 within Dell. The main differential is our main

1 Again, the technical sales reps. And we had some  
2 from the marketing department as well that were  
3 our managers.

4 Q. So you would have had a -- I mean, it  
5 sounds like you were sort of a specialized niche  
6 group. Is that -- am I accurate in that? I  
7 mean --

8 A. Not exactly. It was -- because there  
9 was so few, they kept having management from  
10 different divisions trying to take over to us  
11 until they found a good fit. But no matter what,  
12 we were still classified as originally the  
13 small/medium business sales reps and then  
14 eventually the HSB sales reps.

15 Q. And how were you compensated?

16 A. Just like anyone else on the floor. We  
17 had base salary as well as a commission and then  
18 bonuses on top of that.

19 Q. And what were your bonuses tied to?

20 A. They were tied to the overall  
21 performance on network assessments as well as  
22 installations on units actually sold.

23 Q. And what kind of units were you  
24 selling, the whole ball of wax?

25 A. It depended on the customer and who was

1 very rarely would it extend beyond that.

2 Towards the end, however, with the  
3 limited budget and the budget cuts Dell was going  
4 through, removing marketing, training, trainers,  
5 coaches, all those roles started to fall on us as  
6 well. So we had to do our normal day-to-day  
7 activities and take on additional activities as  
8 well.

9 Q. In terms of compensation, how was it  
10 paid? Was it on a -- it was a base and a  
11 salary -- I mean a commission?

12 A. That's correct. Just like any other  
13 sales role within the business department.

14 Q. And what was the mix? Was it 60/40,  
15 80/20, 70/30?

16 A. It was 80/20, and then moved to a  
17 70/30, if I remember correctly.

18 Q. And in terms of -- did you carry like  
19 a -- as I understand it, the initial job category  
20 is an SR1B, is the very entry level, and then you  
21 move up to SR1, 2, 3?

22 A. That's correct.

23 Q. And what level was --

24 A. I had moved up and been promoted to an  
25 SR3.

1       sorry, let me rephrase that. If I worked 36 hours  
2       and then took eight hours, I would lose the two --  
3       or four hour differential.

4       Q.               So if you actually worked 36 hours and  
5       then -- in the first four days -- and put in --  
6       took off on Friday and put in eight hours of PBA  
7       for a total of 44, you'd still just get paid 40?

8       A.               That's correct.

9       Q.               Was there ever a time where you got  
10      paid less than 40?

11      A.               No. I have always worked 40 hours or  
12      more.

13      Q.               Other than the time where Julie  
14      Birdsong got involved, was that the only time you  
15      ever talked with anyone about it?

16      A.               That is correct, because, again, at  
17      that point in time, I was told it was Dell policy  
18      and that's the way it is.

19      Q.               Now, other than the -- that instance  
20      with Darin Johnson where he got -- had to go get  
21      Julie involved, did you have any other discussions  
22      with him directly about time-keeping or anything  
23      of that nature?

24      A.               No.

25      Q.               What about Jim Trimble, did you ever

1 Q. And what about commissions?

2 A. No commissions. It was straight hourly  
3 pay.

4 Q. And then when you became a Dell  
5 employee, how were you paid?

6 A. It started off as a 50/50 split, 50  
7 percent commission, 50 percent base.

8 Q. And did you have an overtime payment?

9 A. There had always been an overtime  
10 payment, which actually surprised me, since we  
11 were classified as salary.

12 Q. And how was it paid? Did they tell  
13 you?

14 A. Never. I never could figure out  
15 how they paid us. I knew how to figure out  
16 commission. I knew how to figure out bonuses.  
17 That was it.

18 Q. Did you ever ask anyone for an  
19 explanation of how overtime was paid?

20 A. Yes. I asked for how overtime was  
21 paid. I also asked for how the overtime  
22 commission was paid, and nobody could give me a  
23 straight answer or the formula for it.

24 Q. Do you remember who you asked or had  
25 conversations with it about?